

## PREAMBLE

AN ORDINANCE ESTABLISHING ZONING REGULATIONS FOR CERTAIN AREAS OF MONTGOMERY COUNTY, NORTH CAROLINA, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT AND AMENDMENT THEREOF AND CREATING A BOARD OF ZONING ADJUSTMENT IN ACCORDANCE WITH THE STATUTES OF NORTH CAROLINA, GOVERNING COUNTY ZONING.

BE IT ORDAINED AND ENACTED by the Board of County Commissioners of Montgomery County, State of North Carolina, as follows:

## **ARTICLE I. GENERAL REGULATIONS AND PROVISIONS**

### Section 1. Purpose

This Ordinance is designed to guide the growth of the various land uses of the county and to encourage the future development of the county in accordance with a plan of land use and population density so that the county may realize its best potentialities as a place to live and work.

### Section 2. Authority and Jurisdiction

The provisions of this Ordinance are adopted under authority granted by Chapter 153A, Article 18, Part 3 of the General Statutes of North Carolina.

The statutory provision that requires Montgomery County to adopt and administer the water supply watershed protection management requirements, procedures, and density and built-upon area standards contained in this ordinance is North Carolina General Statute 143-214.5 (Chapter 143, Article 21).

The provisions of this Ordinance shall apply within the zoning limits of Montgomery County as shown on the Zoning Map. Such zoned area may include any or all area within the county outside of municipalities and their adopted extraterritorial jurisdictions.

### Section 3. Zoning Districts Established

For the purpose of this Ordinance, portions of the unincorporated territory of Montgomery County as set forth on the accompanying official zoning maps, is hereby divided into three types of districts as follows:

R-1	Residential – Stick built and Modular homes
R-2	Residential – Stick built, Modular, Doublewide mobile homes
R-3	Residential - Stick built, Modular, Doublewide, and Singlewide mobile homes
C	Commercial
I	Industrial
WS-II	Drowning Creek Watershed Overlay
WS-III	Bear Creek Watershed Overlay
WS-IV	Tuckertown-Badin-Tillery (T-B-T) Watershed Overlay
2 additional zoning districts, which follow a separate ordinance, include :	
Campground	
Mobile Home Park	

The boundaries and location of said districts are hereby established as designated on the official zoning map, entitled “Official Montgomery County Zoning Map.” Said map, together with all notations and designations thereon and amendments thereto, is hereby made fully a part of this Ordinance just as if the same were fully described herein.

The overlay districts are designed to “lay over” another zoning district and not stand alone. The underlying district defines permitted and conditional uses, certain dimensional requirements, and various other requirements or restrictions. The overlay district gives additional dimensional and other requirements. Where the underlying and overlay district appear to be in conflict, the stricter or more restrictive requirements shall apply.

### Section 4. Interpretation of District Boundaries

When uncertainty exists with respect to the boundaries of any district as shown on the Official Zoning Map, the following rules shall apply:

- 4.1** District boundary lines are intended to be along, or parallel to, property lines or lot lines and to the center line of streets, highways, railroads, easements, other rights-of-way, and creeks, streams or other water channels.
- 4.2** In the absence of specified distances on the map, dimensions or distances shall be determined by the scale of zoning map such as the 1320 feet zoning off major corridors.
- 4.3** When the street or property layout existing on the ground is at variance with that shown on the zoning map, the Board of Adjustment shall interpret the district boundaries of this Ordinance.

## Section 5. Interpretation of District Regulations

Regulations for each district shall be enforced and interpreted according to the following rules:

### **5.1 Uses by Right**

All listed uses are permitted by right according to the terms of this Ordinance. Conditional uses are permitted subject to compliance with the additional regulations specified. Additional permitted uses, when in character with the district, may be added to the Ordinance by amendment. Uses not designated as permitted by right or permitted subject to additional conditions shall be prohibited.

### **5.2 Minimum Regulations**

Regulations set forth by this Ordinance shall be minimum regulations. If the requirements set forth in this Ordinance are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the more restrictive or higher standard shall govern.

### **5.3 Restrictive Covenants**

Unless restrictions established by covenants running with the land are prohibited by the provisions of this Ordinance, nothing herein contained shall be construed to render such covenants inoperative. Restrictive covenants are not enforced by the County.

### **5.4 Bona Fide Farms**

This Ordinance shall in no way regulate, restrict, prohibit or otherwise deter any bona fide farm within the jurisdiction of this Ordinance, except that any use of such property for non-farm purposes shall be subject to these regulations. Bona Fide Farms do not include intensive livestock operations as defined by the state of North Carolina.

## Section 6. Severability of Ordinance

If for any reason any one or more sections, sentences, clauses or parts of this Ordinance are held invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance but shall be confined in its operation to the specific sections, sentences, clauses or parts of this Ordinance held invalid and the invalidity of any section, sentence, clause, or part of this Ordinance in any one or more instances shall not affect or prejudice in any way the validity of this Ordinance in any other instance.

## Section 7. Definitions

Except where specifically defined herein, all words used in this Ordinance shall carry their customary meanings. Words used in the present tense include the future tense; the singular number includes the plural; the word “building” includes the word “structure”; the word “lot” includes the word “plot” or “parcel”; the term “shall” is always mandatory; the words “used” or “occupied,” as applied to any land or building shall be construed to include the words “intended, arranged, or designed to be used or occupied.”

### **7.1 Agricultural Uses**

The commercial production of crops, fruits, vegetables, livestock, poultry, and other agricultural products. For the purpose of the Ordinance, these uses include the use of water for stock watering irrigation, and other farm purposes.

### **7.2 Best Management Practice (BMP)**

A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

### **7.3 Board of Adjustment (Watershed Review Board)**

A local body, created by Ordinance, whose responsibility is to hear appeals from decisions of the Zoning Administrator, to consider requests for variances from the terms of the Zoning Ordinance, and to review any proposed amendments, changes, or repeal to this Ordinance which may affect the county’s compliance with the watershed protection rules.

### **7.4 Bona Fide Farms**

US Census of Agriculture defines a farm as a unit with ten or more acres of land, if sales are not less than \$50, and a unit with less than ten acres, if sales are over \$250. Bona Fide Farms do not include intensive livestock operations as defined by the state of North Carolina

## **7.5 Buffer**

A fence, wall, hedge, other area of natural or planted vegetation, or device used to enclose, screen, or separate one use or lot from another. Also, an area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the natural pool elevation of impounded structures and from the bank of each side of streams and rivers.

## **7.6 Building**

Any structure enclosed and isolated by exterior walls constructed or used for residence, business, industry, or other public or private purposes, or accessory thereto, and including tents, lunch wagons, dining cars, trailers, free standing billboards and signs and similar structures whether stationary or movable.

## **7.7 Building, Accessory**

A subordinate building, the use of which is customarily incidental to that of a principal building on the same plot.

## **7.8 Building, Height of**

The vertical distance measured from the grade to the highest point of the coping of a flat roof; to the deck line of a mansard roof; or to mean height level between the eaves and ridge of a gable, hip, or gabled roof.

## **7.9 Building Principal**

A building in which is conducted the principal use of the plot on which it is situated.

## **7.10 Built-Upon Area**

That portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel areas (e.g. roads, parking lots, and paths), recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious).

**7.11 Certificate of Occupancy (Watershed Protection Occupancy Permit)**

Official certification that a premises conforms to provisions of the Zoning Ordinance and building code and may be used or occupied. Such a certificate is granted for new construction or for alterations or additions to existing structures or a change in use. Unless such a certificate is issued, a structure cannot be occupied or used, nor can the use of any building or land be changed.

**7.12 Certificate of Zoning and Watershed Protection Compliance (Zoning Permit)**

Official certification that a proposed use of land and/or construction project conforms to the requirements of the Zoning Ordinance and a Building Permit, if required, or a Certificate of Occupancy may be issued.

**7.13 Critical Area**

The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or one-half mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first).

**7.14 Development**

Any land-disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

**7.15 Development, Existing (See 7.45 Vested Right)**

Those projects that are built or that have established a vested right under the North Carolina zoning law as of the effective date of this ordinance based on at least one of the following criteria:

- A. Substantial expenditures of resource (time, labor, money) based on good faith reliance upon having received a valid local government approval to proceed with the project; or

- B. Having an outstanding valid building permit; or
- C. Substantial expenditures of resources (time, labor, money) and having an approved site specific or phased development plan.

#### **7.16 Development, Nonresidential**

All development other than residential development, agriculture, and silviculture.

#### **7.17 Development, Residential**

Buildings for residence, such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc., and their associated outbuildings, such as garages, storage buildings, gazebos, etc., and customary home occupations.

**Single-Family Residential.** Any development where no building contains more than one dwelling unit, and each unit is on a separate lot unless a variance has been issued for additional units. A variance for an additional unit is only allowed in R-2 and R-3.

**Duplex.** A separate building containing complete and separate living quarters for two (2) families.

**Multi-Family.** A building containing complete and separate living quarters for three (3) or more families.

#### **7.18 Discharging Landfill**

A facility with liners, monitoring equipment, and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated on site and discharged to a receiving stream.

#### **7.19 Dwelling**

Any building, or portion thereof, which is designed for living and/or sleeping purposes.

#### **7.20 Hardship**

An unusual situation or condition that relates to a particular property and which denies the property owner reasonable use of his property if strict enforcement of the Zoning Ordinance is followed. A hardship exists only when it is not self-created or when it is not economic in nature. In other words, a true hardship exist only when the literal interpretation and/or enforcement of the zoning regulations would place a property owner or

individual in an unusual situation and, in doing so, would deny him the right to use his property for any permitted use or render the property of no practical use that has reasonable value.

**7.21 Hazardous Material**

Any substance listed as such in: SARA Section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).

**7.22 Home Occupation**

An occupation customarily conducted for profit within a dwelling and carried on by the occupant thereof, which use is clearly secondary to the use of the dwelling for residential purposes.

**7.23 Lot**

A parcel of land occupied or to be occupied by a main building or group of main buildings and accessory buildings, together with such yards, open spaces, lot width and lot area as are required by this Ordinance, and having not less than the minimum required frontage upon a street, either shown on a plat of record, or considered as a unit of property and described by metes and bounds.

**7.24 Lot, Depth of**

The average horizontal distance between front and rear lot lines.

**7.25 Lot of Record**

A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds of Montgomery County, or a lot described by metes and bounds, the description of which has been recorded. The recording of the lot by either means shall have preceded the adoption of the zoning district regulations.

**7.26 Lot, Width of**

The average horizontal distance between the side lot lines measured at the from line of the building or proposed building.



## **7.27 Mobile Home**

A structure which (a) consists of a single unit completely assembled at the factory or of two (double-wide) or three (triple-wide) principal components totally assembled at the factory and joined together at the site; and (b) is designed so that the total structure (or in the case of a double-wide or triple-wide, each component thereof) can be transported on its own chassis; and (c) is over forty feet long and over ten feet wide; and (d) is designed to be used as a dwelling and provides complete, independent living facilities for one family, including permanent provisions for living, sleeping, eating, cooking, and sanitation; and (e) is actually being used, or is held ready for use, as a dwelling.

A mobile home must meet or exceed the construction standards promulgated by the US Department of Housing and Urban Development that were in effect at the time of construction and that satisfies the following additional criteria:

- A. Mobile homes must be constructed after July 1, 1976 .
- B. Doublewide mobile homes must have a length not exceeding four times its width, with length measured along the longest axis and width measured at the narrowest part of the other axis;
- D. The pitch of the roof for a doublewide mobile homes must have a nominal minimum vertical rise of three feet for each twelve feet of horizontal run. Singlewide must have a nominal minimum vertical rise of three inches for every 12 inches of horizontal run. Roof must be finished with a type of shingle that is commonly used in standard residential construction;
- E. All roof structures shall provide an eave projection of no less than six inches, which may include a gutter;
- F. The exterior siding consists predominantly of vinyl or aluminum horizontal lap siding (whose reflectivity does not exceed that of gloss white paint), wood, or hardboard, comparable in composition, appearance, and durability to the exterior siding commonly used in standard residential construction;
- G. Doublewide mobile homes must be set up in accordance with the standards set by the North Carolina Department of Insurance and a continuous, permanent masonry foundation and masonry curtain wall (skirting), unpierced except for required ventilation and access, is installed under the perimeter of the mobile home; Singlewide mobile homes must have a permanent masonry foundation with masonry skirting or manufactured skirting.
- H. The skirting for all mobile homes must be maintained.

- I. Stairs, porches, entrance platforms, ramps, and other means of entrance and exit to and from a doublewide mobile home shall be installed or constructed in accordance with the standards set by the North Carolina Department of Insurance, attached firmly to the primary structure and anchored securely to the ground; and
- J. The moving hitch, wheels and axles, and transporting lights have to be removed for all doublewides.

**7.28 Mobile Home Park**

Land used or intended to be used, leased, or rented for occupancy by mobile homes. This definition shall not include mobile home sales lots on which unoccupied mobile homes are parked for purposes of inspection and sale.

**7.29 Nonconforming Building**

A building which is situated on a lot in such a manner that it does not meet the yard requirements of the zoning district.

**7.30 Nonconforming Land**

A lot which does not meet the minimum area requirements of the zoning district in which it is located.

**7.31 Nonconforming Use**

A legal use of a building and/or of land that antedates the adoption of these regulations and does not conform to the regulations for the zone in which it is located.

**7.32 Parking Space**

The storage space for one automobile of not less than 8 feet by 20 feet, plus the necessary access space. It shall always be located outside the dedicated street right-of-way.

**7.33 Person**

An individual, firm, partnership, corporation, company, association, joint stock association, or governmental entity. It includes a trustee, receiver, assignee, or similar representative of any of them.

**7.34 Planned Unit Development**

A use of land designed to provide for developments incorporating a single type or a variety of residential and related uses which are planned and developed as a unit. Such development may consist of individual lots or common building sites. Common area must be an element of the plan related to effecting the long-term value of the entire development.

**7.35 Sign**

Any letter, symbol, number, or combination of these, which may be seen from the right-of-way of a street or highway.

**7.36 Sign, Outdoor Advertising**

A standard structural poster panel or painted sign either free-standing or attached to a building, for the purpose of conveying information, knowledge, or ideas to the public about a subject unrelated to the premises upon which located.

**7.37 Site Specific Development Plan**

A plan of land development submitted to the county for purposes of obtaining approval of a subdivision plat or a conditional use permit. In addition to requirements already established by the county (for subdivision plats and conditional use permits), the Plan shall describe the type of use and intensity of use planned for the specific parcel or parcels or property. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels or property may constitute a site specific development plan.

**7.38 Toxic Substance**

Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their offspring or other adverse health effects.

### **7.39 Use**

Any continuous or continual occupation or activity taking place upon a parcel of land including, but not limited to, the location of tents, trailer, the storage of cars, machinery or other materials.

### **7.40 Variance**

The relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest, which will not create a nuisance, and where, owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship. As used in this Ordinance, a variance maybe authorized only for height, area, and size of a structure of size of yards open space, and any use not listed within the zoning districts that would commonly apply. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.

**Major Watershed Variance.** A variance that results in any one or more of the following:

- A. The complete waiver of a management requirement;
- B. The relaxation, by a factor of more than ten percent (10%) of the required size of the vegetative buffer;
- C. The relaxation of any management requirement that applies to a development proposal intended to qualify under the high density option; and
- D. Any increase in single-family residential density or multi-family residential and nonresidential built-upon area.

**Minor Watershed Variance.** A variance that does not qualify as a major variance.

### **7.41 Vested Right (See 7.15 Development, Existing)**

The right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan.

**7.42 Water Dependent Structure**

Any structure for which the use requires access to or proximity to or being situated within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks, and bulkheads. Ancillary facilities, such as restaurants, outlets for boat supplies, parking lots, and commercial boat storage areas are not water dependent structures.

**7.43 Watershed**

The entire land area contributing surface drainage to a specific point (e.g., the water supply intake).

**7.44 Yard, Front**

An open space on the same lot with a building, between the front line of the building (exclusive of steps) and the front property or street right-of-way line and extending across the full width of the lot.

**7.45 Yard, Rear**

An open space between the rear line of the principal building (exclusive of steps) and the rear line of the lot extending the full width of the lot and may be used for accessory buildings.

**7.46 Yard, Side**

An open, unoccupied space on the same lot with a building between the side line of the building (exclusive of steps) and the side line the lot and extending from the front yard line to the rear yard line.

**7.47 Zoning Administrator (Zoning Enforcement Officer)**

The official charged with the enforcement of the Zoning Ordinance.

**7.48 Zoning Permit**

See Certificate of Zoning and Watershed Protection Compliance.

## Section 8. Off-Street Parking and Loading Regulations

There shall be provided at the time of erection of any building, or at the time any principal building is enlarged or increased in capacity; or before conversion from one type of use of occupancy to another; permanent off-street parking space in the amount specified by this section. Such parking space may be provided in a parking garage or property graded open space.

### **8.1 Certification of Minimum Parking Requirements**

Each application for a zoning permit submitted to the Zoning Enforcement Officer as provided for in this Ordinance shall include information as to the location and dimensions of off-street parking and loading space and the means of entrance and exit to such space. This information shall be in sufficient detail to enable the Zoning Enforcement Officer to determine whether or not the requirements of this section are met.

### **8.2 Minimum Size of Off-Street Parking Spaces**

For the purpose of this Ordinance, the minimum dimensions of a parking space shall be 8 feet by 20 feet.

### **8.3 Number of Off-Street Parking Spaces Required**

The following off-street parking spaces shall be required:

Residential Units	Two (2) parking spaces on the same lot for each residential unit.
Mobile Home Park	Two (2) parking spaces for each mobile home space.
Hospitals	One parking space for two (2) beds intended for patient use, exclusive of bassinets, plus one parking space for each employee on the largest shift.
Medical Clinics	Four parking spaces for each doctor plus one space for each employee.
Nursing Homes	One parking space for each five beds for patient use.
Churches	One space for each 8 seats in the main auditorium.
Private Club or Lodge	One space for each four seats and one space for each two seats at a counter or bar.

Office	One space for each 200 square feet of gross leasable floor space.
Elementary & Junior High Schools	Two parking spaces for each classroom and administrative office.
Technical Institute	One parking space for each five students for which the building was designed plus one parking space for each classroom and administrative office.
Stadiums	One parking space for each eight spectator seats.
Auditoriums	One parking space for each four seats in the largest assembly room.
Motels or Hotels	One parking space for each room to be rented plus one additional space for each three employees.
Offices, General	One parking space for each two hundred square feet of gross floor space.
Car Sales	One parking space for each one hundred square feet of display area.
Offices, Professional (Other than medical and dental)	One parking space for each employee plus three spaces per professional on staff.
Public Utility Building	One parking space for each employee.
Banks	One parking space for each two hundred (200) square feet of gross floor area plus one for each two employees.
Filling Stations	Five parking spaces for each grease rack and five spaces for each wash rack.
Funeral Homes	One parking space for each four seats in the chapel or parlor.
Retail Uses not Otherwise Indicated	One parking space for each two hundred square feet of gross leasable floor area.
Wholesale Uses	One parking space for each two employees on the largest shift.

Industrial Uses	One parking space for each two employees on the largest shift.
-----------------	--

#### **8.4 Off-Street Loading for Industrial Uses**

The number of off-street loading berths required by this section shall be considered as the absolute minimum and the developer shall evaluate his own needs to determine if they are greater than the minimum specified by this section. For purposes of this section, an off-street loading berth shall have minimum plan dimensions of twelve (12) feet by twenty-five (25) and fourteen (14) feet overhead clearance with adequate means for entrance and exits.

<u>Square Feet of Gross Floor Area</u>	<u>Required Number of Berths</u>
0- 25,000	1
25,000- 40,000	2
40,000-100,000	3
100,000-160,000	4
160,000-240,000	5
240,000-320,000	6
320,000-400,000	7
Each 90,000 above 400,000	1 additional space

### **Section 9. Penalties and Enforcement**

#### **9.1 Criminal Penalties**

Any person, firm or corporation violating any section or provision of this Ordinance shall, upon conviction, be guilty of a misdemeanor and shall be fined not more than \$50.00, or imprisoned not more than thirty (30) days. Each day such violation continues, however, shall be a separate and distinct offense, punishable as hereinbefore provided. [For example, a continued violation of one (1) week after receiving notice from the Zoning Administrator could accumulate penalties of up to \$350 fine or imprisonment of up to two hundred and ten (210) days.]



## **9.2 Civil Remedies**

If a building or structure is erected, constructed, reconstructed, or altered, repaired, converted, or maintained, or any building, structure or land is occupied or used in violation of the General Statutes of North Carolina, this Ordinance, or other regulation made under authority conferred thereby, Montgomery County may apply to the District Court, Civil Division, or any other court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property.

In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the case. An order of abatement may direct that buildings or other structures on the property be closed and demolished or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this Ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the county may execute the order of abatement. The county shall have a lien on the property for the cost of executing an order of abatement.

## **9.3 Equitable Relief**

Montgomery County may apply to the District Court, Civil Division or other court of competent jurisdiction for an appropriate equitable remedy. It shall not be a defense to the County's application for equitable relief that there is an adequate remedy at law.

## **9.4 Combination of Remedies**

The County may choose to enforce this Ordinance by any one, all, or combination of the above procedures.

## **9.5 State Enforcement Authority**

The Environmental Management Commission may take any appropriate preventive or remedial enforcement action authorized under GS 143-214.5 against any person who violates any minimum statewide water supply watershed management requirement.

Section 10. Effective Date

This Ordinance shall be in force and after its passage and approval.

Passed and Adopted this, \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
County Clerk

\_\_\_\_\_  
Chairman, Board of County Commissioners

This Ordinance was amended \_\_\_\_\_, 20\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
County Clerk

\_\_\_\_\_  
Chairman, Board of County Commissioners

Section 11. Vested Rights

The purpose of this section is to implement provisions of GS 153A-344.1 which establishes a statutory zoning vested right upon the approval of a site specific development plan.

**11.1 Procedure**

- A. At the time that the landowner submits application for a subdivision plat, mobile home park, apartment complex, residential planned development, cluster development, etc., or Conditional Use Permit, the landowner must declare he is seeking to acquire a vested right, as defined in Section 7, pursuant to GS 153A-344.1 and the Montgomery County Zoning Ordinance by completing the appropriate form.
- B. For subdivision plats where a vested right will be sought, the Zoning Administrator will advertise and schedule a public hearing following the same procedure used for Conditional Use Permits. (For Conditional Use Permits, the scheduling of public hearings is automatic).

- C. For proposed developments that do not require subdivision plat approval or Conditional Use Permit, the landowner may seek to establish a vested right by following procedures for application for a Conditional Use Permit.
- D. A variance shall not constitute a site specific development plan, and approval of a site specific development plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained.

### **11.2 Establishment of Vested Right**

- A. A vested right shall be deemed established upon the valid approval, or conditional approval, of the above mentioned site specific plan, or Conditional Use Permit. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the subdivision plat, or Conditional Use Permit.
- B. A right which has been vested as provided for in this section shall remain vested for a period of two (2) years. This vesting shall not be extended by any amendments or modifications unless expressly provided by the county. The county may, but is not required to, extend the vested term to a maximum total of five (5) years.

### **11.3 Termination**

A vested right, once established as provided for in this section, precludes any zoning action by the county which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site specific development plan except that the right will be terminated if one or more of the following occurs:

- A. With written consent of the affected landowner;
- B. Upon finding that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan;
- C. To the extent that the affected landowner receives compensation for all costs and losses;

- D. Upon finding that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the plan approval by the town;
- E. Upon the enactment of a state or federal law or regulation which precludes development as contemplated in the site specific development plan; or
- F. At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

## Section 12. General Provision

### **12.1 Zoning Affects All Land, Buildings, and Uses**

Upon and after the adoption of this Ordinance, no building or land shall be used and no building or part thereof shall be erected, moved, or structurally altered except in conformity with the regulations specified herein for the district in which it is located.

### **12.2 Required Yards Not to be Used by Another Building**

The minimum yards or other open spaces required by this Ordinance for each and every building shall not be encroached upon or considered as meeting the yard and open space requirements of any other building.

### **12.3 Relationship of Building to Lot**

In no case shall there be more than one principal building and its customary accessory buildings on a lot except in the case of a designed complex of professional, residential, or commercial buildings in an appropriate zoning district, e.g., school campus, shopping center, and industrial park. Detached garages and carports must meet the same setback requirements as the principal building, just as if they were attached.

### **12.4 Street Access**

No building shall be erected on a lot which does not abut a street or have access to a street, provided that in a business district or in a planned project in a residential district, a building may be erected adjoining a parking area or dedicated open space which has access to a street used in common with other lots.

### **12.5     Reduction of Lot and Yard Areas Prohibited**

No yard or lot existing at the time of passage of this Ordinance shall be reduced in size or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Ordinance shall meet at least these minimum requirements.

### **12.6     Business Uses of Mobile Homes and Trailers**

No mobile home or trailer shall be used in any manner for business or commercial purposes except when used for a sales office on a mobile home sales lot or except with a temporary occupancy permit in special cases as described in Article II, Section 3.4

### **12.7     Mobile Home Requirements**

All mobile homes, whether used for residential or business purposes shall meet the following requirements:

- A.     Mobile homes shall be placed on a permanent foundation and secured by a tie-down system meeting the standards listed in the “State of North Carolina Regulations for Mobile Homes.”
- B.     Each mobile home stand and space shall be graded to provide adequate storm drainage away from the mobile home and such that there will exist no more than three (3) feet difference between the chassis of the mobile home and the finished grade of the stand along the entire perimeter of the mobile home proper.
- C.     The following utility standards shall apply. All installations (other than those within the mobile home itself) of plumbing and electrical wiring and all gas and oil appliances shall comply with the provisions of the building, plumbing, electrical, heating, and gas regulations of the state, county, and town.
- D.     Each singlewide mobile home shall be installed with skirting manufactured specifically for such use. A doublewide mobile home must have a permanent masonry foundation and skirting.
- E.     Empty liquified petroleum gas containers and other objects and materials not approved by the Fire Department shall not be stored under mobile homes.
- F.     The tongue, wheels, axles, and running lights shall be removed on doublewides.

## **12.8 Corner Visibility**

No planting, fence or other obstruction to visibility of vehicles shall be erected, planted, maintained, or allowed to exist in any district within the range of three (3) feet to ten (10) feet above the centerline grades of the intersecting streets in the triangular area bounded by the street right-of-way lines of such corner lots and a line joining points along these street lines twenty-five (25) feet from the point of intersection.

## **Section 13. Water Supply Watershed Protection**

### **13.1 Water Supply Watershed Protection**

GS 143-214.5 provides for a cooperative program of water supply watershed management and protection to be administered by local governments consistent with minimum statewide management requirements established by the Environmental Management Commission. Approximately 29% of Montgomery County lies within one of five water supply watersheds. The county has 17,222 acres in the WS-II watershed of Drowning Creek, none of it in a critical area. It has 18,843 acres in the WS-III watershed of Bear Creek, again none of it in a critical area. Montgomery County has more land in WS-IV watersheds, 15,076 acres, including some in a critical area, in the Badin Lake watershed; 610 acres of critical area in the Tuckertown Reservoir watershed; and 41,393 acres, including some critical area, in the Lake Tillery watershed.

### **13.2 Basic Development Requirements**

The county has elected to use the low density option under the water supply watershed protection rules. For the Drowning Creek, Badin Lake, Tuckertown Reservoir and Lake Tillery Watershed a vegetative buffer with a minimum width of thirty (30) feet is required from the banks of all perennial streams or other waters. For the Bear Creek watershed a vegetative buffer within a minimum width of thirty-five (35) feet is required from the banks of all perennial streams or other waters. For all water supply watersheds within the County one hundred (100) feet buffers are required where new development exceeds the low density requirements.

WS-II watersheds, such as Drowning Creek, are permitted a maximum density of one dwelling unit per two acres for single family residential development and six percent (6%) built-upon area for all other development in the critical area. (Note: Montgomery County does not include any WS-II critical area.) In the balance of the WS-II watershed a maximum density of one dwelling unit per acre for single family residential development and twelve percent

(12%) built-upon area for all other development are permitted. No new discharging landfills are allowed. In the WS-III critical area a maximum of one dwelling unit per acre and twelve percent (12%) built-upon area are permitted. (Note: Montgomery County does not include any WS-III critical area.) In the balance of the WS-III area a maximum of one dwelling unit per one-half acre or twenty-four percent (24%) built-upon is permitted. No new discharging landfills are allowed. In the WS-IV critical area a maximum density of one dwelling unit per one-half acre and twenty-four percent (24%) built-upon area is permitted. In the rest of the WS-IV watershed (protected area) a maximum density of one dwelling unit per one-half acre and twenty-four percent (24%) built-upon area is permitted where curbs and gutters are used or one dwelling unit per one-third acre and thirty-six percent (36%) built-upon area is permitted for projects without a curb and gutter street system. The density requirements in the WS-IV watershed apply only to projects requiring a Sediment/Erosion Control Plan (i.e. one acre or more of land disturbing activity). No new landfills or residual or petroleum contaminated soil application sites are allowed in the WS-IV critical area.

### **13.3 Buffer Specifications**

In all area within the Drowning Creek, Badin Lake, Tuckertown Reservoir and Lake Tillery watershed overlay districts, all lots abutting perennial streams or other waters (indicated on the most recent versions of USGS 1:24,000 scale topographic maps or as determined by local government studies) shall maintain a vegetative buffer of a minimum thirty (30) feet from the normal elevation of the pool or from the bank beside the stream. In all areas within the Bear Creek watershed overlay district, all lots abutting perennial streams or other waters (indicated on the most recent versions of USGS 1:24,000 scale topographic maps or as determined by local government studies) shall maintain a vegetative buffer of a minimum thirty-five (35) feet from the normal elevation of the pool or from the bank beside the stream. For all water supply watershed overlay where permission to develop under the 5/70 rule is granted, a minimum one hundred (100) feet wide vegetative buffer shall be required. Where possible and practicable, the buffer shall be natural vegetation, not a grassed lawn or other cultivated area in order to avoid the use of fertilizers, pesticides, herbicides, or other similar chemicals or pollutants.

### **13.4 Development in Buffers**

No new development is allowed in the required buffer except for water dependent structures and public projects, such as road crossings, boat ramps and docks, and greenways where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from

surface waters, and maximize the utilization of stormwater Best Management Practices.

### **13.5     Development Under the 10/70 Rule**

A maximum of ten percent (10%) of the county's area within WS-II and WS-III watersheds outside the critical areas as delineated on July 1, 1993 may be developed with new nonresidential development projects of up to seventy percent (70%) built upon area.

In addition, within WS-II, WS-III, and WS-IV watersheds new development and expansions to existing development may occupy up to ten (10%) of the protected area with up to seventy percent (70%) built-upon area of a project by project basis, when approved as a special intensity allocation (SIA). The Zoning Administrator (Watershed Administrator) is authorized to approve SIA's consistent with the provisions of this Ordinance.

Each proposed project must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater runoff away from surface waters, and incorporate Best Management Practices to minimize water quality impact. Also for the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

The Board of Commissioners may, after a public hearing, approve a project under the 10/70 Rule. A fee shall be paid by the applicant according to county policy to cover administrative and advertising costs.

### **Section 14. Pre-Existing Lots and Expansions To Structures**

A pre-existing lot owned by an individual prior to the effective date of this ordinance, regardless of whether or not a vested right has been established, may be developed for single family residential purposes even though such lot may be nonconforming as to size or shape.

Expansions to structures classified as existing development must meet the requirements of this ordinance, however, the built-upon area of the existing development is not required to be included in the built-upon area calculations for the entire site.



## ARTICLE II. ADMINISTRATION

### Section 1. Application

Except as hereinafter provided for, no building, structure, or premises shall be used and no building or part thereof, shall be erected, reconstructed, enlarged, or altered except in conformity with the regulations prescribed by this Ordinance.

### Section 2. Nonconforming Land, Uses, and Buildings

After the effective date of this Ordinance, land or structures, or the uses of land or structures, which would be prohibited under the regulations for the district in which it is located, shall be considered as nonconforming. It is the intent of this Ordinance to permit these nonconforming uses to continue, provided they conform to the following provisions:

#### **2.1     Nonconforming Land**

Where the owner of a lot (or his successor in title thereto) at the time of the adoption of this Ordinance or any amendment thereto does not own sufficient land to enable him to conform to the applicable lot requirements of this Ordinance, as amended, the owner may develop such lot as a building site for a single residence in a district where residences are permitted, or for a single business where businesses are permitted, provided that the lot width and lot area are not more than 20 percent below the minimum specified in this Ordinance, and that the minimum yard and other requirements are maintained. In any case where the lot width and lot area are more than 20 percent below the minimum specified in the Ordinance, or other dimensional requirements cannot be met, the Board of Adjustment may approve, as a special exemption, such dimensions as shall conform as closely as possible to the required dimensions. If two or more adjoining and vacant lots of record are in single ownership at any time after the vacant lots of record are in single ownership at any time after the adoption of this Ordinance, such lots shall be considered as a single lot or several lots which meet the minimum requirements of the Ordinance for the district in which such lots are located.

#### **2.2     Nonconforming Use**

Where the use of land or of any building is nonconforming, such use shall not hereafter be enlarged or extended in any way.

- A.     A nonconforming use shall not be expanded to any lot or lots adjacent to the lot upon which it was located at the time of enactment of this Ordinance, even though such additional lots may be at that time or

thereafter in the same ownership as the lot containing the nonconforming use.

- B. A nonconforming use shall not be changed to any other use unless such use is listed as a permitted use for the district in which the nonconforming use is located.
- C. If the nonconforming use is housed within a structure, the structure shall not be enlarged or expanded while such use is continued. If a nonconforming use is discontinued for any period for the purposes of enlarging or expanding a structure, every future use of the premises shall be a conforming use. Normal maintenance and repair and any alterations necessary to meet the specifications of this or other ordinances of the county shall be permitted.
- D. If a building housing a nonconforming use is damaged or destroyed by any means to the extent that the value of the remaining structure is less than forty (40) percent of the cost of replacing the original structure at the time of such damage or destruction, the structure shall not be repaired or replaced unless the nonconforming use is discontinued and all future uses of the premises shall be permitted uses.
- E. If a building housing a nonconforming use is removed, it shall not be replaced unless the use of the replacement building be a permitted use in the district in which the building is located.
- F. If a nonconforming use is discontinued for any reason for a continuous period of 180 days, every future use of the premises shall be a conforming use.

### **2.3 Nonconforming Buildings**

If a building is nonconforming, it may be enlarged in any way that will not increase the extent of nonconformity, nor create any new nonconformity, provided that the use of the building is a permitted use for the district in which the building is located.

- A. If a nonconforming building is removed, it shall be replaced only with a building, which conforms in every way with the provisions of this Ordinance.
- B. If a nonconforming building is damaged or destroyed by any means to the extent that the value of the remaining structure is less than forty percent of the cost of replacing the original structure at the time of such damage or destruction, the structure shall not be repaired or replaced unless the next structure and use meet all the requirements of this Ordinance.

## **2.4 Exception Permitted for Owner-Occupied Residences**

Residences in Commercial or Industrial zones which are nonconforming uses but are occupied for such use by the owner of the residence may be rebuilt regardless of the extent of damage or destruction and may be enlarged or expanded, provided that:

- A. They meet the minimum dimensional requirements for the district in which they are located.
- B. In the event of repairing damage, such rebuilding or repairs shall be made within 180 days of the date of such damage.
- C. The building contains only one residential unit, and
- D. All repairs and construction shall be in conformance with any other applicable ordinances or regulations.

## **2.5 Nonconforming Signs**

If any sign shall be nonconforming, such sign shall be required to conform to the provisions of this Ordinance within two years of the effective date of this Ordinance.

## **Section 3. Permits**

This Ordinance shall be administered and enforced by a Zoning Administrator or Administrators who shall be designated by the Board of County Commissioners.

### **3.1 Zoning Permits (Certificates of Zoning and Watershed Protection Compliance)**

No building or use of land, other than a bona fide farm and its customary appurtenances, in any residential, commercial, or industrial district shall hereafter be erected, commenced, reconstructed, enlarged or altered unless and until a zoning permit therefore is obtained from the Zoning Administrator. A record of all permits shall be kept on file in the county Inspections Department and copies shall be furnished upon request to any person.

Zoning Permits shall be void after six (6) months from the date of issues unless substantial progress on the project has been made by that time or unless a Building Permit has been issues. If after commencement, the work is discontinued for any period of twelve (12) months, the Zoning Permit shall immediately expire and further work as described in the expired permit shall not proceed unless and until new Zoning and Building Permits have been obtained.

### **3.2 Zoning Application**

Each application for a Zoning Permit in a Commercial or Industrial Zone shall be accompanied by two (2) sets of plans drawn to scale, one (1) of which shall be returned to the applicant upon approval. The plan shall show the following:

- A. The shape and dimensions of the lot on which the proposed building or use is to be erected or conducted;
- B. The location of said lot with respect to adjacent rights-of-way;
- C. The shape, dimensions, and location of all buildings, existing and proposed, on the said lot;
- D. The nature of the proposed use of the building or land, including the extent and location of the use, on the said lot;
- E. The location and dimensions of off-street parking and loading space and means of ingress and egress to such space;
- F. The square feet and percentage of lot as built-upon area; and
- G. Any other information which the Planning Board of County Commissioners, or Zoning Administrator may deem necessary for consideration in enforcing the provisions of this Ordinance.

For a Residential Zoning Permit, the supplied application from the Planning Department will contain information needed by the Inspections Department.

### **3.3 Issuance of Zoning Permits**

Prior to issuance of the permit, the Zoning Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this Ordinance. If the proposed activity as set forth in the application is in conformity with the provisions of this Ordinance, the Zoning Administrator shall issue a permit. If any application for a Zoning Permit is not approved, the Zoning Administrator shall state in writing on the application the cause for such disapproval. Issuance of a permit shall, in no case, be construed as waiving any provision of this or any other ordinance or regulation.

### **3.4 Certificates of Occupancy (Watershed Protection Occupancy Permits)**

No new building, or part thereof, shall be occupied, no addition or enlargement of any existing building shall be occupied, no existing building after being altered or moved shall be occupied, and no change of occupancy

shall be made in any existing building, or part thereof, until the Building Inspector or Zoning Administrator has issued Certificate of Occupancy therefore. The change of occupancy provision shall not apply on rooms intended for transient rental, or to re-rental of residential units, or to a change in occupant not representing a change in use.

A Temporary Certificate of Occupancy may be issued for a portion or portions of a building, which may safely be occupied prior to final completion and occupancy of the entire building or for other temporary uses.

Application for a Certificate of Occupancy may be made by the owner or his agent at the same time as submitting an application for a Building Permit, if needed, or for a Zoning Permit. In cases requiring a Building Permit, the Certificate of Occupancy shall be issued automatically by the Building Inspector after all final inspections have been made.

In the case of existing buildings or other uses not requiring a Building Permit, after supplying the information and data necessary to determine compliance with this Ordinance and appropriate regulatory codes of the county for the occupancy intended, the Zoning Administrator shall issue a Certificate of Occupancy when, after examination and inspection, it is found that the building or use in all respects conforms to the provisions of this Ordinance and appropriate regulatory codes of the county for the occupancy intended.

#### Section 4. Public Hearings

Any case involving an appeal or variance requires a public hearing to be held by the Board of Adjustment and any case involving a Conditional Use Permit, a change of zoning district classification or other ordinance changes requires a public hearing to be held by the Board of County Commissioners. The Planning Board may also hold a public hearing.

Notice of the public hearing shall be published in a newspaper of general circulation in Montgomery County at least once a week for two successive weeks prior to the hearing, the first publication being not less than ten (10) days nor more than twenty-five (25) days before the date of the hearing, and, in the case of changing zoning classifications, by mailing notices to all owners of property proposed for rezoning and to adjoining property owners in the case of rezoning and Conditional Use Permit applications. Notice may also be made by posting the property concerned.

When a zoning reclassification is proposed, notices of the public hearing shall be mailed by first class mail to the property owners of each affected property and adjacent property owners. The names of the owners and addresses used shall be those listed in the county tax listings and tax abstracts. The Zoning Administrator, or his designated agent, shall mail the notices and certify that fact to the Board of County Commissioners. Such certification shall be deemed conclusive in the absence of fraud.

In the case of a rezoning that directly affects more than fifty (50) properties owned by a total of at least fifty (50) different property owners, where the reclassification is an amendment to the zoning text, where the zoning is an initial zoning of the entire zoning jurisdiction area, or the county is adopting a water supply watershed protection program as required by GS 143-214.5, the county shall, instead of mailing notices to each property owner, publish once a week for four successive calendar weeks in a newspaper having general circulation in the area, maps showing the boundaries of the area affected by the proposed ordinance or amendment. The map shall not be less than one-half of a newspaper page in size. the notice shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside the county's jurisdiction or outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property shall be notified by mail as described in the previous paragraph.

#### Section 5. Revocation of Conditional Use Permits and Variances

After a public hearing has been held and approval granted for a conditional use or variance, the Board of Adjustment of Board of County Commissioners, whichever originally granted approval, may reverse any decision without a public hearing upon finding one or more the following.

- A. That the approval was obtained by fraud;
- B. That the use for which such approval was granted is not being executed;
- C. That the use for which such approval was granted has ceased to exist or has been suspended for six (6) months;
- D. That the permit granted is being, or recently has been exercised contrary to the terms or conditions of such approval;
- E. That the permit granted is in violation of an Ordinance or statute
- F. That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance.

The Zoning Administrator shall give the permittee written notice of intention to revoke such permit at least ten (10) days prior to a public review thereof. After the conclusion of the review, the Board may revoke the permit.

## Section 6. Appeals

Appeals may be taken to the Board of County Commissioners by any person, firm, or corporation aggrieved, or by any officer, department, or board of the county affected by any decision of the Planning Board. Such appeals shall be filed with the Board of County Commissioners by notice specifying the grounds for appeal. Appeal shall be filed in writing within sixty (60) days from the date of the action being appealed.

Appeals may be taken to the Board of Adjustment (also serving as the Watershed Review Board) by any person, firm, or corporation aggrieved, or by any officer, department, or board of the county affected by any decision of the Zoning Administrator, or his authorized agent, thought to be in error. Such appeals shall be filed with the Board of Adjustment by notice specifying the grounds for appeal. Appeal shall be filed in writing within sixty (60) days from the day of the action being appealed. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken together with any additional written reports or documents as he deems pertinent.

The Board of Adjustment may, after the public hearing, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm, wholly or in part, or may modify any order, requirement, decision, or determination as ought to be made, and to that end shall have the powers of the Zoning Administrator, from whom the appeal is taken.

Further appeals from the Board of Adjustment or from any action of the Board of County Commissioners shall be taken directly to the courts or otherwise as provided by law.

## Section 7. Application Fees

Each applicant for an appeal from an administrative decision, for a Zoning Permit, for a variance, for a Conditional Use Permit, or with a request for rezoning or other change in this Ordinance shall pay a nonrefundable fee, according to the schedule of fees adopted by the Board of County Commissioners, to Montgomery County to cover the costs of advertising and administration. A receipt for this fee shall be issued by the county. This fee, however, shall not apply to requests originating with any department, board, or agency of Montgomery County.

## Section 8. Appointment, Power, and Duties of the Zoning Administrator

The Board of County Commissioners shall appoint an individual to act as Zoning Administrator. The Zoning Administrator, or his authorized agent, is hereby authorized, and it shall be his duty, to enforce the provisions of this Ordinance. This official shall have the right to enter upon the premises at any reasonable time necessary to carry out his duties. It is the intention of this Ordinance that all questions arising in connection with enforcement and interpretation shall be presented first to the Zoning Administrator. Appeal from his decision shall be made to the Board of Adjustment and thence to the courts, as provided by law.

In administering the provisions of this Ordinance, the Zoning Administrator, also known as the County Planner, or Planning Director, shall:

- A. Serve as the Watershed Administrator
- B. Make and maintain records of all applications for permits and requests listed herein, and records of all permits issued or denied, with notations of all special conditions or modifications involved.
- C. File and safely keep copies of all plans submitted, and the same shall form a part of the records of his office and shall be available for inspection at reasonable times by any interested person.
- D. Transmit to the appropriate board of commission and the Board of County Commissioners all applications and plans for which their review and approval is required.
- E. Conduct inspections of premises and, upon finding that any of the provisions of this Ordinance are being violated, notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it.
- F. Issue Zoning and Occupancy Permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.
- G. Keep records of all amendments to the local water supply watershed protection provisions and shall provide copies of all amendments, upon adoption, to the Division of Water Quality.
- H. Keep records of the county's utilization of the provision that a maximum of ten percent (10%) of the noncritical area of the watersheds in the county may be developed with nonresidential development to a maximum of seventy percent (70%) built-upon surface area. In ES-IV watersheds these records include property developed under the 10/70 option. ( See Section 13.5). Records of each watershed shall include the total acres of noncritical watershed area, total acres eligible to be developed under this option, total areas approved for this development option, and individual records for each project with the following information: location, acres, site plan, use, and stormwater management plan, as applicable.
- I. Keep a record of variances to the local water supply watershed protection provisions. This record shall be submitted for each calendar year to the Division of Water Quality on or before January 1st of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.
- J. The Zoning Administrator shall be authorized to issue other permits as required by this Ordinance or the Board of County Commissioners.



## **ARTICLE III. ESTABLISHMENT OF DISTRICT REGULATIONS**

District regulations limiting the use of buildings and/or land and regulating the size and arrangement of the building on its lot are set forth in this section.

### **Section 1. R-1 Residential District**

#### **1.1 Intent**

The R-1 residential district is established as a district in which the principal use of land is for low-density residential and agricultural purposes. The regulations of this district are intended to protect the agricultural sections of the community from an influx of uses likely to render it undesirable for farms and future development, and to insure that residential developments dependent upon septic tank systems for sewage disposal will occur at sufficiently low densities to insure a healthful environment.

#### **1.2 Permitted Uses**

- A.** Agriculture
- B.** Silviculture
- C.** Stick built houses (Single-family dwellings only)
- D.** Modular Homes built to North Carolina Code (Single-family dwellings only)
- E.** Parks, playgrounds, community centers, schools, churches, cemeteries, country clubs, golf courses.
- F.** Greenhouse and Nursery Operations (but no commercial sales on premises).
- G.** Public utility substations or pumping stations.
- H.** Residential planned developments (subject to the conditions contained in Article VII).
- I.** Home Occupations- limited to residences of premises. Use shall not occupy more than 25% of total floor area of home and no products or displays shall be visible from the street.

### **1.3 Dimensional Requirements**

- |    |                              |  |
|----|------------------------------|--|
| A. | Minimum required lot area:   | 20,000 sq ft.                                      |
| B. | Minimum required lot width:  | 80 feet  |
| C. | Minimum required front yard: | 30 feet measured from the street right-of-way line |
| D. | Minimum required side yards: | 10 feet measured from the property line            |
| E. | Minimum required rear yard:  | 20 feet measured from the rear property line.      |

### **1.4 Location of Accessory Building**

Accessory buildings may occupy ten percent (10%) of the gross lot area, must be built a minimum of ten (10) feet from any lot line, and, except for attached garages, must be built to the rear of the principal building.

### **1.5 Corner Lots**

On corner lots, the side yard on that side of the lot abutting the side street shall be twenty (20) feet.

### **1.6 Signs**

Community uses permitted in this district may erect only one nonflashing sign, which harmonizes with the character of the neighborhood and does not exceed twelve (12) square feet in area. All other permitted uses may erect only one nonilluminated sign which does not exceed six (6) square feet in area, unless otherwise approved by the Montgomery County Planning Board.

### **1.7 Parking**

Off-street parking shall be provided as required in Article I, Section 8 of this Ordinance.

## Section 2. R-2 Residential District

### **2.1 Intent**

The R-2 Residential District is established to promote low and medium density residential neighborhoods.

### **2.2 Permitted Uses**

- A. All uses permitted in the R-1 residential district.
- B.* Double wide mobile homes
- C. Multi-family dwellings.

### **2.3 Dimensional Requirements**

- A. Minimum required lot area 20,000 sq feet
- B. Minimum required lot width: 80 feet
- C. Minimum required front yard: 30 feet measured from the street right-of-way line
- D. Minimum required side yards: 10 feet measured from the property line
- E. Minimum required rear yard: 20 feet measured from the rear property line
- F. Area in addition for second Structure: 3,000 sq feet

### **2.4 Location of Accessory Building**

Accessory buildings may occupy ten percent (10%) of the gross lot area, must be built a minimum of ten (10) feet from any lot line, and except for attached garages, must be built to the rear of the principal building.

### **2.5 Corner Lots**

On corner lots, the side yard on that side of the lot abutting the side street shall be twenty (20) feet.

### **2.6 Signs**

Community uses permitted in this district may erect only one nonflashing sign, which harmonizes with the character of the neighborhood and does not

exceed twelve (12) square feet in area. All other permitted uses may erect only one nonilluminated sign which does not exceed six (6) square feet in area, unless otherwise approved by the Montgomery County Planning Board.

**2.7     Parking**

Off-street parking shall be provided as required in Article I, Section 8 of this Ordinance.

Section 3. R-3 Residential District

**3.1     Intent**

The R-3 District is established to promote areas for affordable housing as well as other housing from R-1 and R-2.

**3.2     Permitted Uses**

- A.     All uses permitted in R-1 and R-2.
- B.     Singlewide mobile homes

**3.4     Dimensional Requirements**

- |    |   |   |
|----|---|---|
| A. | Minimum required lot area                 | 20,000 sq feet  |
| B. | Minimum required lot width:               | 80 feet   |
| C. | Minimum required front yard:              | 30 feet measured<br>from the street right-of-<br>way line |
| D. | Minimum required side yards:              | 10 feet measured<br>from the property line                |
| E. | Minimum required rear yard:               | 20 feet measured<br>from the rear property<br>line        |
| G. | Area in addition for second<br>Structure: | 3,000 sq feet   |

### **3.5 Location of Accessory Building**

Accessory buildings may occupy ten percent (10%) of the gross lot area, must be built a minimum of ten (10) feet from any lot line, and except for attached garages, must be built to the rear of the principal building.

### **3.6 Corner Lots**

On corner lots, the side yard on that side of the lot abutting the side street shall be twenty (20) feet.

### **3.7 Signs**

Community uses permitted in this district may erect only one nonflashing sign, which harmonizes with the character of the neighborhood and does not exceed twelve (12) square feet in area. All other permitted uses may erect only one nonilluminated sign which does not exceed six (6) square feet in area, unless otherwise approved by the Montgomery County Planning Board.

### **3.8 Parking**

Off-street parking shall be provided as required in Article I, Section 8 of this Ordinance.

## **Section 4. C Commercial District**

### **4.1 Intent**

The Commercial District is established as a district in which the principal use of land is for the provision of retail goods and services. Residential homes can be placed in this district with a signed, notarized, and recorded statement in the Register of Deeds stating that all commercial uses may be placed next to the residence.

### **4.2 Permitted Uses**

- A. Banks and other financial institutions.
- B. Barber and beauty shops
- C. Grocery stores, drug stores, and dry good stores.
- D. Hardware stores.
- E. Laundries, Laundromats and dry-cleaning pick-up stations.
- F. Restaurant

#### **4.3     Conditional Uses**

- A.     Live bait stores
- B.     Marinas and minor boat facilities.
- A.     Service stations (All major automobile repair or storage shall be performed inside the structure).
- D.     Highway fruit stands and gift shops.
- E.     Building material sales.
- F.     Heavy farm equipment sales and services.
- G.     Mobile home and trailer sales.
- H.     Motels.
- I.     New and used car sales.
- J.     Nursery and garden stores.
- K.     Veterinarians and kennels.
- L.     Amusement places, including open-air drive-in theaters.
- M.     Automobile parts and accessories.
- N.     Automobile repair.
- P.     Boat and marine sales.
- Q.     Farmer's Market
- R.     Day care facilities
- S.     Funeral Homes
- T.     Storage Services and Warehousing (mini- Warehouses)
- U.     Towers of communication, broadcasting, receiving, radar and any other purpose (set backs must be one foot for every one foot of tower from all property lines).

#### **4.4 Dimensional Requirements**

- |    |                              |   |
|----|------------------------------|---|
| A. | Minimum required lot area:   | 10,000 sq feet  |
| B. | Minimum required lot width:  | 100 feet  |
| C. | Minimum required front yard: | 40 feet measured from the street right of way line. The first 15 feet from the property line shall be developed for the purpose of sidewalks, grass and plants, and shall not be used for any purpose except for the necessary drives and walks not including off-street parking.   |
| D. | Minimum required side yards: | No side yard is required except where a lot abuts a residentially zoned lot or where the lot is a corner lot. Lots abutting a residentially zoned lot shall have at least a 15 foot side yard measured from the side property line. On corner lots, the side yards fronting on the side street shall have at least a 15 foot width. |
| E. | Minimum required rear yard:  | No rear yard is required except where a lot abuts residentially zoned lot. In such instance, the abutting rear yard shall be at least 15 feet measured from the rear property line.   |

#### **4.5 Signs**

No use in this district shall have more than three signs, including those on the face of the building. In no case shall any of these signs be larger than fifty

square feet, unless otherwise approved by the Montgomery County Planning Board.

#### **4.6 Parking**

Off-street parking shall be provided as required in Article I, Section 8 of this Ordinance.

#### **4.7 Buffers**

Landscaped buffer strips shall be required where any use in this district abuts land zoned residential (R-1,R-2, R-3). The buffer strips shall be a minimum of continuous evergreen composition not less than six (6) feet in height or less than fifteen (15) feet in width or a buffer plan must be submitted to the Planning Board for review. The buffer plan must be a to scale sketch showing the property, the adjacent properties, highways or roads and the buffer to be used (This includes height, location and material to be used). The buffer must be installed before a Certificate of Occupancy can be issued. The buffer plan will remain in the zoning file. The buffering requirement may be waived by the County Commissioners upon recommendation of the Planning Board along any boundary, which is naturally screened by evergreen plant materials or topography, or may be deferred in isolated areas.

#### **4.8 Appearance**

No commercial business shall maintain an aesthetic nuisance such as trash dumpsters in the front of the property, loading docks in the front of the property, abandoned equipment, used or new material that is being stored in public view or any other nuisance that may be determined by the County Commissioners. The Commissioners may also wavier the appearance requirement upon review of a valid request.

### **Section 5. I - Industrial District**

#### **5.1 Intent**

This is an area primarily for industrial assembly, fabrication, and storage located on planned sites with access to highways and containing adequate utility facilities Residential homes can be placed in this district with a signed, notarized, and recorded statement in the Register of Deeds stating that all industrial uses may be placed next to the residence.

#### **5.2 Permitted Uses**

- A. Apparel and other finished products - manufacturing.
- B. Communications, broadcasting, and receiving towers; radio, television, and radar; with setbacks from all property lines of at least one (1) foot for every foot of structure height.



- C. Printing, publishing, and allied industries.
- D. Professional, scientific, and controlling instruments; photographic and optical goods; watches and clocks-manufacturing.
- E. Public utility substations, pumping stations, water storage facilities, and water treatment plants.
- F. Textile mill products - manufacturing.
- H. Transportation terminals and facilities
- I. Warehousing and storage services.
- J. Wholesale trade, except for petroleum bulk stations
- K. Fabricated metal products - manufacturing
- L. Lumber and wood products - manufacturing
- M. Milling and animal feed preparation
- N. Mobile home and modular home manufacturing
- O. Rubber and miscellaneous plastic products – manufacturing

### **5.3 Conditional Uses**

- A. Abattoirs, slaughter houses, and meat processing plants
- B. Commercial or industrial incinerators
- C. Junk yards and auto salvage yards
- D. Landfills
- E. Sewage treatment plants
- F. Scrap and waste materials processing
- G. Any establishments emitting offensive smoke, dust, noise or odor shall only be approved on finding that the public health is not impaired, and surrounding land use will not be adversely affected
- H. Paper and allied products - manufacturing
- I. Chemical and allied products - manufacturing
- J. Food and kindred products – manufacturing

#### **5.4 Dimensional Requirements**

- |    |                               |   |
|----|-------------------------------|---|
| A. | Minimum required lot area:    | 1 acre  |
| B. | Minimum required lot width:   | 100 feet  |
| C. | Minimum required front yards: | 40 feet measured from the street right-of way line. This yard shall not be used for any purpose other than the necessary drives and walks and shall not be used for off-street parking. |
| D. | Minimum required side yards:  | 15 feet except where a lot abuts a residentially zoned lot. Lots abutting residentially zoned lots shall have at least a 50-foot side yard measured from the side property line.        |
| E. | Minimum required rear yard:   | 25 feet except where a lot abuts a residentially zoned lot. Lots abutting residentially zoned lots shall have at least a 50-foot rear yard measured from the rear property line.        |

#### **5.5 Signs**

No use in this district shall have more than three signs, including those on the face of the building. In no case shall any of these signs be larger than fifty square feet, unless otherwise approved by the Montgomery County Planning Board.

#### **5.6 Parking**

Off-street parking shall be provided as required in Article I, Section 8 of this Ordinance.

#### **5.7 Buffers**

Landscaped buffer strips shall be required where any use in this district abuts land zoned residential (R-1, R-2 and R-3). The buffer strips shall be a minimum of continuous evergreen composition not less than six (6) feet in height or less than fifteen (15) feet in width or an alternate buffer plan must be submitted to the Planning Board for review. The buffer plan must be a to scale sketch showing the property, the adjacent properties, highways or roads and the buffer to be used (This includes height, location and material to be used). The buffer must be installed before a Certificate of Occupancy can be

issued. The buffer plan will remain in the zoning file. The buffering requirement may be waived by the County Commissioners upon recommendation of the Planning Board along any boundary, which is naturally screened by evergreen plant materials or topography, or may be deferred in isolated areas.

## **5.8 Appearance**

No industrial business shall maintain an aesthetic nuisance such as trash dumpsters in the front of the property, loading docks in the front of the property, abandoned equipment, used or new material that is being stored in public view or any other nuisance that may be determined by the County Commissioners. The Commissioners may also waive the appearance requirement upon review of a valid request.

## **Section 6. WS-II Drowning Creek Watershed Overlay District:**

### **6.1 Density**

**Outside Critical Area** (no critical area in Montgomery County) One (1) dwelling unit per acre (40,000 sq ft. excluding roadway right-of-way)

Twelve percent (12%) built-upon area for all developments other than single family residential. (Built upon areas shall be designed and sited to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow).

### **6.2 Development Under 10/70 Rule**

A maximum of ten percent (10%) of Montgomery County's area in the WS-II watershed outside the critical area as delineated on July 1, 1993 may be allowed to be developed up to seventy percent (70%) built-upon surface area, as determined on a project by project basis. For the purpose of calculating built-upon area, the total project area shall include total acreage in the tract on which the project is to be developed.

Each project must to the maximum extent practicable minimize built-upon surface area, direct stormwater runoff away from surface waters, and incorporate Best Management Practices to minimize water quality impacts.

### **6.3 Buffers**

A vegetative buffer is required along all perennial waters. (See Section 13.3 Buffer Specifications in Article I.)

### **6.4 Use Restrictions**

Best Management Practices are required for forestry and transportation.

- Silviculture activities are subject to the provisions of the Forest Practices Guidelines Related to Water Quality [15A NCAC 11.0101-.0209]
- The Department of Transportation must use BMP's as described in their document, "Water Supply Watershed Best Management Practices."

No new discharging landfills are allowed.

## Section 7 WS-III Bear Creek Watershed Overlay District

### **7.1 Density**

**Outside Critical Area** (No critical area in Montgomery County) One (1) dwelling unit per one-half (1/2) acre (20,000 sq ft excluding roadway right-of-way).

Twenty-four percent (24%) built-upon area for all developments other than single family residential. (Built-upon areas shall be designed and sited to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow).

### **7.2 Development Under 10/10 Rule**

A maximum of ten percent (10%) of Montgomery County's area in the WS-III watershed outside of the critical area as delineated on July 1, 1993 may be allowed to be developed up to seventy percent (70%) built-upon surface area, as determined on a project by project basis. For the purpose of calculating built-upon areas, the total project area shall include total acreage in the tract on which the project is to be developed.

Each project must to the extent practicable minimize built-upon surface area, direct stormwater runoff away from surface waters, and incorporate Best Management Practices to minimize water quality impacts.

### **7.3 Buffers**

A vegetative buffer is required along all perennial waters. (See Section 13.3 Buffer Specifications in Article I.)

### **7.4 Use Restrictions**

Best Management Practices are required for forestry and transportation.

- Silviculture activities are subject to the provisions of the Forest Practices Guidelines Related to Water quality [15A NCAC 11.0101-.0209]
- The Department of Transportation must use BMP's as described in their document, "Water Supply Watershed Best Management Practices."

No new discharging landfills are allowed.

Section 8. WS-IV Tuckertown-Badin-Tillery Watershed Overlay District:

**8.1 Density**

The following applies only to projects requiring a Sediment/Erosion Control Plan (involving one (1) acre or more of land disturbing activity.)

**Critical Area:**

One (1) dwelling unit per one-half (1/2) acre (20,000 sq ft excluding roadway right-of-way.)

Twenty-four percent (24%) built-upon area for all development other than single family residential. (Built-upon areas shall be designed and sited to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow).

**Protected Area**

With Curb and Gutter:

One (1) dwelling unit per one-half (1/2) acre (20,000 sq ft excluding roadway right-of-way).

Twenty-four percent (24%) built-upon area for all development other than single family residential.

Without Curb and Gutter:

One (1) dwelling unit per one-third (1/3) acre (*excluding roadway right-of-way.*)

Thirty-six percent (36%) built-upon area for all development other than single family residential.

**8.2 Development Under 10/70 Rule**

A maximum of ten percent (10%) of Montgomery County's area in the WS-IV watershed outside the critical area as delineated on July 1, 1993 may be allowed to be developed up to seventy percent (70%) built-upon surface area, as determined on a project by project basis. For the purpose of calculating built-upon area, the total project area shall include total acreage in the tract on which the project is to be developed.

Each project must to the maximum extent practicable minimize built-upon surface area, direct stormwater runoff away from surface waters, and incorporate Best Management Practices to minimize water quality impacts.

### **8.3 Buffers**

A vegetative buffer is required along all perennial waters. (See Section 13.3 Buffer Specifications in Article I.)

### **8.4 Use Restrictions**

#### **Critical Area:**

Agriculture, forestry, and transportation are required to use Best Management Practices (BMP's).

- Agricultural activities are subject to provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Activities in the WS-IV critical area must maintain a ten (10) foot vegetated buffer or equivalent control, and animal operations with greater than one hundred (100) animal units must use BMP's as determined by the Soil and Water Conservation Commission.
- Silviculture activities are subject to the provisions of the Forest Practices Guidelines Related to Water Quality [15A NCAC 11.0101-.0209]
- The Department of Transportation must use BMP's as described in their document, "Water Supply Watershed Best Management Practices".

No new landfills are allowed.

No new residuals or petroleum contaminated soil application sites are allowed.

#### **Protected Area**

Forestry and transportation activities must use Best Management Practices.

- Silviculture activities are subject to the provisions of the Forest Practices Guidelines Related to Water Quality [15A NCAC 11.0101-.0209]
- The Department of Transportation must use BMP's as described in their document, "Water Supply Watershed Best Management Practices".

## **ARTICLE IV. CHANGES AND AMENDMENTS**

The Board of County Commissioners may amend, supplement, or change the text regulations and zoning district lines according to the following procedures:

### **Section 1. Action by the Applicant**

The following actions shall be taken by the applicant:

#### **1.1 Initiation of Amendments**

Proposed changes or amendments may be initiated by the County Commissioners, Planning Board, Zoning Advisory Board, Board of Zoning Adjustment, or by one or more owners or lessees of property within the area proposed to be changed or affected.

#### **1.2 Application**

An application for any change or amendment shall contain a description and/or statement of the present and proposed zoning regulation or district boundary to be applied, and the names and addresses of the owner or owners of the property. Such application shall be filed not later 12 noon, 14 working days prior to the meeting at which the application is to be considered.

#### **1.3 Fees**

A nonrefundable fee, according to the schedule available at the office of the Zoning Administrator, shall be paid to Montgomery County for each application for an amendment, to cover cost of advertising and other administrative expenses involved.

#### **1.4 Public Hearing Notices**

When a change in the zoning classification of a piece of property is requested, the applicant shall provide to the Zoning Administrator or his designated agent a list of names and addresses, as obtained from the county tax listings and tax abstracts, of all adjacent property owners and all owners of property within the area under consideration for rezoning along with a copy of the tax map showing the property. The Zoning Administrator shall then mail notices of the public hearing to each person on the list and shall certify that fact to the Board of County Commissioners. Such certification shall be deemed conclusive in the absence of fraud.

## **1.5     Reapplication for Amendment**

With the exception of requests originating with the Planning Board, Board of Adjustment, or County Administration, an application for any rezoning of the same property or any application for the same amendment to the Zoning Ordinance text shall be permitted only once within any twelve (12) month period. The Board of County Commissioners, by seventy-five (75) percent affirmative vote of its total membership, may waive this restriction if it finds any emergency exists.

## **Section 2. Action by the Planning Board**

Every proposed amendment, supplement, change, modification, or repeal of this Ordinance shall be referred to the Planning Board for its recommendation and report.

### **2.1     Review Guidelines**

The following policy guidelines shall be followed by the Planning Board concerning zoning amendments and no proposed zoning amendment will receive favorable recommendation unless:

- A.     The proposal will place all property similarly situated in the area in the same category, or in appropriate complementary categories.
- B.     There is convincing demonstration that all uses permitted under the proposed district classification would be in the general public interest and not merely in the interest of an individual or small group.
- C.     There is convincing demonstration that all uses permitted under the proposed district classification would be appropriate in the area included in the proposed change. (When a new district designation is assigned, any use permitted in the district is allowable, so long as it meets district requirements, and not merely uses which applicants state they intend to make of the property involved.)
- D.     There is convincing demonstration that the character of the neighborhood will not be materially and adversely affected by any use permitted in the proposed change.
- E.     The proposed change is in accord with any land use plan and should planning principles.



## **2.2 Timing or Review and Decision**

A petition to amend the district boundaries or regulations established by this Ordinance shall be considered by the Planning Board at its next regular monthly meeting or any called special meeting, provided it has been filed, complete in form and content, at least two (2) weeks prior to such meeting.

Otherwise, consideration may be deferred until the following monthly meeting. The Planning Board may sit concurrently with the public hearing held by the County Commissioners.

The Planning Board shall render its decision on any properly filed petition within thirty (30) days after the public hearing by the County Commissioners and shall transmit its recommendation and report, including the reasons for its determinations, to the Board of County Commissioners.

## **Section 3. Action by the Board of County Commissioners**

The Board of County Commissioners of Montgomery County, North Carolina, may from time to time as they see fit, amend any provision of this Ordinance according to the following procedure:

### **3.1 Notice and Public Hearing**

No amendment shall be adopted by the County Commissioners until and after public notice and hearing. Notice of the public hearing shall meet the requirements as given in Article II, Section 4.

### **3.2 County Commissioners Action**

Before taking such lawful action as it may deem advisable, the County Commissioners shall consider the Planning Board's recommendations on each proposed Zoning Amendment. If no recommendation is received from the Planning Board within 30 days after public hearing by the County Commissioners, the proposed amendment shall be deemed to have been approved by the Planning Board.

### **3.3 Watershed Protection Rules**

Under no circumstances shall the Board of County Commissioners adopt such amendments, supplements, or changes that would cause this Ordinance to violate the watershed protection rules as adopted by the NC Environmental Management Commission. All amendments which may affect these rules must be filed with the NC Division of Environmental Management, NC Division of Environmental Health, and the NC Division of Community Assistance.

#### Section 4. Action by the Board of Adjustment (Watershed Review Board)

Every proposed amendment, supplement, change, modification, or repeal of this Ordinance which may affect the county's compliance with the watershed protection rules shall be referred to the Board of Adjustment for its review and recommendation.

Within forty (40) days after its first review of the petition, the Board of Adjustment shall render its decision and transmit to the County Commissioners its recommendation and report, including the reasons for its determinations.

#### Section 5. Protest to the Proposed Amendment

In case of a protest against any amendment to the regulations or district boundaries established by this Ordinance, signed by the owners of twenty (20%) percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent thereto: either in the rear thereof or on either side thereof, extending one hundred (100) feet there from, or of those directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite lots; such amendments shall not become effective except by favorable vote of three-fourths (3/4) of all the members of the Board of County Commissioners. These provisions shall not, however, apply to any amendment which initially zones property added to the territorial coverage of the Ordinance.

No protest against any change in or amendment to the regulations or district boundaries established by this Ordinance shall be valid or effective under the provisions of the foregoing paragraph unless it is in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the Zoning Administrator in sufficient time to allow at least (2) normal work days, excluding Saturdays, Sundays, and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition.

#### Section 6. Withdrawal of the Application

Any application submitted in accordance with the provisions of Section 1 for the purpose of amending the regulations or district boundaries established by this Ordinance may be withdrawn at any time, but fees are nonrefundable.

## ARTICLE V. CONDITIONAL USES

### Section 1. Purpose

The development and execution of this Ordinance is based upon the division of the county into districts within which districts the use of land and buildings, and the bulk and location of structures in relation to the land, are substantially uniform. *It is recognized, however, that there are certain uses which, because of their unique characteristics, cannot be properly classified in any particular district or districts, without consideration, in each case, of the impact of those uses upon neighboring land and of the public need for the particular use in the particular location.* Such conditional uses fall into two categories:

- A. Use publicly operated or traditionally affected with a public interest.
- B. Uses entirely private in character, but of such an unusual nature that their operation may give rise to unique problems with respect to their impact upon neighboring property or public facilities.

### Section 2. Application

#### **2.1 Initiation of Conditional Uses**

Any person having freehold interest in land, or a possessory interest entitled to exclusive possession, or a contractual interest which may become a freehold interest or an exclusive possessory interest, and which is specifically enforceable, may file an application to use such land for one or more of the conditional uses provided for in this Ordinance in the zoning district in which the land is located.

#### **2.2 Application for Conditional Uses**

An application for a conditional use shall be filed with the Zoning Administrator on a form prescribed by the Zoning Administrator. The application shall be accompanied by such plans and/or data prescribed by the Planning Board and shall include a statement in writing by the applicant and adequate evidence showing that the proposed conditional use will conform to the standards set forth in Section 4. Such application shall be forwarded from the Zoning Administrator to the Planning Board with a request for review of said application and accompanying data and submission of a written recommendation thereon to the County Commissioners.

### Section 3. Public Hearing

#### **3.1 Notice of Hearing**

The applicant shall provide to the Zoning Administrator a list of names and addresses of all adjacent property owners along with one (1) set of envelopes stamped and with typed addresses to each person on the list. These addressed envelopes and the list shall be submitted at least (14) fourteen work days prior to the public hearing. The Zoning Administrator shall then mail a copy of the legal notice to each adjacent property owner.

#### **3.2 Hearing on Application**

Upon receipt in proper form of the written recommendations referred to in Section 2.2 above, the Board of County Commissioners shall hold at least one public hearing on the proposed conditional use.

#### **3.3 Authorization**

For each application for a conditional use, the Planning Board shall report to the County Commissioners its findings and recommendations, including the stipulations of additional conditions and guarantees that such conditions will be complied with when they are deemed necessary for the protection of the public interest. If an application for a proposed conditional use is not approved by the County Commissioners within 90 days of the date upon which application is received by the County Commissioners, it shall be deemed to have been denied.

### Section 4. Standards

No conditional use shall be recommended by the Planning Board unless such Board shall find:

- A. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, moral, comfort, or general welfare;
- B. That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish and impair property values within the neighborhood;
- C. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;

- D. That the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values with the neighborhood;
- E. That adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided.
- F. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets, and
- G. That the conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the County Commissioners pursuant to the recommendations of the Planning Board.

#### Section 5. Conditions and Guarantees

Prior to the granting of any conditional use, the Planning Board may recommend, and the County Commissioners may stipulate, such conditions and restrictions upon the establishment, location, reconstruction, maintenance, and operation of the conditional use as is deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements specified in Section 4 above. In all cases in which conditional uses are granted, the County Commissioners shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with.

#### Section 6. Fee

A nonrefundable fee for such application shall be paid at the time of application according to Article II, Section 7.

#### Section 7. Expiration

In a case where a Conditional Use Permit has not been exercised within the time limit set by the Board of County Commissioners or within six (6) months if no specific time limit has been set, then without further action, the permit shall be null and void. "Exercised" as set forth in this section shall mean that binding contracts for the construction of the main building have been let; or in the absence of contracts that the main building is under construction to a substantial degree; or that prerequisite conditions involving substantial

investment are contracted for, in substantial development, or complete (sewerage, drainage, etc.). When construction is not a part of the use, “exercised” shall mean that the use is in operation in compliance with the conditions set forth in the permit.

#### Section 8. Duration of Conditional Use

Any conditions imposed on a conditional use authorized and exercised shall be perpetually binding upon the property unless expressly limited by the Conditional Use Permit or subsequently changed or amended by the County Commissioners after a public hearing.

## **ARTICLE VI. BOARD OF ADJUSTMENT**

### **Section 1. Creation; Officers; Terms of Members; Meetings**

#### **1.1 Creation of Board and terms of Members**

There shall be and is hereby created a Board of Adjustment, also known as the Watershed Review Board, hereinafter call the Board, consisting of five (5) members. The members of the Board shall be residents of the zoned area of the county, shall be appointed by the Board of Commissioners, and shall have initial terms of office as follows: One member appointed for a term of one year; two members appointed for terms of two year; and two members for terms of three years. At the completion of the initial term of office for each member, all additional appointments to vacancies of the Board shall be for three-year terms. Two alternate members, meeting residency requirements for regular members, may be appointed by the County Board to serve on the Board in the absence, for any cause, of any regular member. Alternate members shall have an initial term of one year. At completion of the initial term of office, all additional appointments shall be for three-year-terms. In the absence of the Board of Adjustment, the County Commissioners will serve as the Board of Adjustment, upon which all conditions, procedures and terms follow Commissioners guidelines.

#### **1.2 Officers and Meetings**

The Board shall elect one of its members as chairman and shall appoint a secretary and such other subordinates as may be authorized by the County Board. The Board shall draw up and adopt the rules of procedures under which it will operate. Meetings of the Board shall be held at the call of the chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote, indicating such fact, and also keep records of its examination and any other official action.

### **Section 2. Filing and Notice for Appeal**

#### **2.1 Filing an Appeal**

Appeals from the enforcement and interpretation of this Ordinance and requests for variances shall be filed with the Zoning Administrator specifying the grounds thereof and, in the case of appeals, shall be filed within thirty (30) days after the decision by the Zoning Administrator which is being appealed. The Zoning Administrator shall transmit to the Board all applications and records pertaining to such appeals and variances. An appeal stays all

proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by a court of record on application or notice to the officer from whom the appeal is taken and due cause shown.

## **2.2 Hearing of Appeal**

After receipt of notice of an appeal, the Board Chairman shall schedule the time for a hearing which shall be at a regular or special meeting within thirty (30) days from the filing of such notice of appeal.

## **2.3 Notice**

At least one week prior to the date of the hearing, the county shall furnish adjoining property owners with written notice of the hearing and notice of the hearing will be published according to Article II, Section 4.

## **2.4 Fees for Appeals or Variances**

A nonrefundable fee for each application shall be paid to the county at the time of filing according to Article II, Section 7.

# **Section 3. Powers and Duties**

The Board of Adjustment shall have the following powers and duties:

## **3.1 Administrative Review**

To hear and decide appeals where it is alleged by the applicant that there is error in order, requirement, permit, decision, determination, or refusal made by the Zoning Administrator in the carrying out or enforcement of any provision of this Ordinance. A concurring vote of four-fifths of the members of the Board shall be necessary to reverse, wholly or partly, any such decision.

## **3.2 Zoning Variances**

To authorize upon appeal in specific cases such variances from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship

In granting the variances, the Board may prescribe appropriate conditions and safeguards in conformity with this Ordinance. A variance for the terms of this Ordinance shall not be granted by the Board unless and until the following findings are made:



- (1) That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district;
- (2) That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
- (3) That the special conditions and circumstances do not result from the actions of the applicant;
- (4) That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other land, structures, or buildings in this same district.
- (5) The requested variance will be in harmony with the purpose and intent of this Ordinance and will not be injurious to the neighborhood or to the general welfare; and
- (6) The variance requested is the minimum variance that will make possible the legal use of the land, building, or structure.

In considering all proposed variances from this Ordinance, the Board shall, before making any finding in a specified case, first determine that the proposed variance will not constitute any change in the zone shown on the zoning map and will not impair an adequate supply of light and air to adjacent property or materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, morals, and general welfare.

No existing nonconforming use in the same district and no permitted use of land in other districts shall be considered grounds for the issuance of a variance. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any expressly or by implication prohibited by the terms of this Ordinance in said district.

In granting a variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purposes of this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Article I, Section 9, and the variance may be revoked as described in Article II, Section 5.

### **3.3 Watershed Protection Variances**

For all proposed watershed variances, the county shall notify and allow a reasonable comment period for all other local governments having jurisdiction within the watershed as well as the county, municipalities, or private water companies, as user of the water supply.

The Board may authorize minor variances in those areas relating to the state water supply watershed protection rules if the request meets the conditions for zoning variances given in Section 3.2. A minor watershed protection variance is defined as the reduction of the required vegetative buffer of up to ten percent (10%). Residential density and built upon area requirements cannot be granted minor variances.

Any variance requested which meets the conditions for a zoning variance and is greater than ten percent (10%) reduction in the vegetative buffer or requests an increase in the residential density or built upon area shall be heard by the Board of Adjustment. A decision by the Board to deny the major variance shall be final. Appeal shall be to a court of competent jurisdiction as provided in Section 4. If it decides in favor of the major variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:

- A. The variance application;
- B. The hearing notices;
- C. The evidence presented;
- D. Motions, offers of proof, objections to evidence, and rulings of them;
- E. Proposed findings and exceptions; and
- F. The proposed decision, including all conditions proposed to be added to the permit.

The preliminary record shall be sent within thirty (30) days to the Environmental Management Commission for its review as follows:

- A. If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (a) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (b) the variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. If the Commission approves the variance as proposed, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

- B. If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (a) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (b) the variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. The Board shall prepare a final decision denying the variance as proposed.

#### Section 4. Appeal from Zoning Board of Adjustment

Appeal from the decision of the Board of Adjustment may be made to the Montgomery County Superior Court within thirty (30) days after the decision is made by the Board, but not thereafter.

## **ARTICLE VII. RESIDENTIAL PLANNED DEVELOPMENTS**

### **Section 1. Generally**

Planned developments are of such substantially different character from other conditional uses that specific and additional standards and exceptions are hereby established to guide the recommendations of the Planning Board and the action of the Board of Commissioners.

### **Section 2. Purposes**

Some specific purposes of the planned residential development procedure are to offer recreational opportunities close to home, to enhance the appearance of neighborhoods by the conservation of streams and local spots of natural beauty, to add to the sense of spaciousness through the preservation of natural green spaces, to counteract the effects of urban monotony and congestion in the streets, to encourage cooperative relationships between neighbors and participation by all age groups in the use and care of local open space tracts in new residential subdivisions, to promote harmonious architecture between adjacent dwellings or institutional buildings and to encourage the placement of structures in proper relationship to the natural characteristics of the site.

### **Section 3. Required Information**

The developer shall be required to submit the following information and any other information that may be required by the Planning Board:

- A. A site plan drawn to scale indicating the arrangement and tentative location of buildings, uses permitted, land to be preserved as permanent common open space, parking and loading spaces, and other special features of the development plan.
- B. A draft of the proposed protective covenants whereby the owner proposes to regulate land use and otherwise protect the proposed development.
- C. A draft of any proposed incorporation agreement and a draft of any bylaws or easement declarations concerning maintenance of recreational and other common facilities.
- D. Data on the market potential necessary to support the location, size, and type of the planned development.

#### Section 4. Use Exceptions

The Planning Board may recommend and the Board of Commissioners may authorize that there be in part of the area of such development, and for the duration of such development, specified uses not permitted by the use regulations of the district in which said development is located; provided, that the Planning Board shall find:

- A. That the uses permitted by such exception are necessary or desirable and are appropriate with respect to the primary purpose of the development.
- B. That the uses permitted by such exception are not of such a nature or so located as to exercise a detrimental influence on the surrounding neighborhood; and
- C. That not more than thirty percent (30%) of the ground area nor more than fifty percent (50%) of the gross floor area of such development shall be devoted to the use permitted by said exception.

#### Section 5. Bulk Regulations

In case of any planned development, the Planning Board may recommend and the Board of Commissioners may authorize exceptions to the applicable bulk regulations of this Ordinance within the boundaries of such development; provided, that the Planning Board shall find:

- A. That such exceptions shall be solely for the purpose of promoting an integrated site plan no less beneficial to the residents or occupants of such development as well as the neighboring property, than would be obtained under the bulk regulations of this Ordinance for buildings developed on separate zoning lots;
- B. That spacing between principal buildings shall be at least equivalent to such space as would be required between buildings similarly developed under the terms of this Ordinance on separate lots; it does not apply in corner-to-corner placement of buildings where perpendicular wall exposures do not overlap, due consideration being given to the openness normally afforded by intervening streets and alleys;
- C. That along the periphery of such planned developments, yards shall be provided as required by the regulations of the district in which said development is located; and
- D. That in a residential planned development the maximum number of dwelling units permitted shall be determined by dividing the net development area by the minimum lot area per dwelling unit required by the district or districts in

which the area is located, and, then increasing this number by fifteen percent. Net development area shall be determined by subtracting the area set aside for nonresidential uses from the gross development area and deducting ten percent of the remainder for streets regardless of the amount of land actually required for streets. The area of land set aside for common open space or recreational use may be included in determining the number of dwelling units permitted.

## Section 6. Designation of Permanent Common Open Space

### **6.1 Definition**

Permanent common open space shall be defined as any land held and developed as permanent open space or any land dedicated to the public as parks, playgrounds, parkway medians, landscaped green space, schools, community centers or other similar areas held in public ownership or covered by an open space easement.

### **6.2 Designation**

No plan for a planned development shall be approved unless such plan provides for permanent open space equivalent to twenty percent (20%) of the total area in single-family residential planned developments, thirty percent (30%) in multiple-family planned developments and five percent (5%) in business and industrial planned developments.

## Section 7. Minimum Lot Area in Residential Planned Developments

Provided the overall number of dwelling units per acre (density) is not increased beyond the provisions of this Ordinance, and provided that the permanent common open space is in accord with the preceding section, the planned development may include minimum lot areas per dwelling unit, which are less than required in the applicable zoning district.

## **ARTICLE VIII. CLUSTER DEVELOPMENTS**

### **Section 1. Purpose**

It is the objective of this section to encourage innovative development proposals that exhibit such special qualities or concepts that they may deviate from standard ordinance requirements. These regulations are established in order that each cluster development proposal will be evaluated on its own merits. It is recognized that some proposals or concepts will be more successful than others and the approval of a specific proposal in one situation does not mean that a similar proposal would be acceptable in other circumstances. These provisions are purely optional and are a voluntary means by which land may be developed outside of the standard ordinance requirements. These provisions are designed to evaluate only those innovative concepts that propose to meet a community need that would not otherwise be met. Finally, it should be emphasized that these provisions should not be confused with or take the place of the normal variance procedures established either in this Ordinance or in this Ordinance or in the subdivision ordinance.

For the purpose of this section, the Montgomery County Planning Board is empowered to review and approve cluster development applications.

### **Section 2. Certain Zoning Ordinance Standards May Be Modified**

The zoning standards listed below which would normally apply to development may be modified through the cluster development process.

- |    |                        |    |                            |
|----|------------------------|----|----------------------------|
| A. | Lot area               | E. | Building separation        |
| B. | Lot width              | F. | Height of fences and walls |
| C. | Public street frontage | G. | Off-street parking         |
| D. | Setback and yards      | H. | Open space                 |

### **Section 3. Subdivision Regulation Standards May Be Modified**

The subdivision design standards listed below which would normally apply to development may be modified through the innovative development process.

#### **3.1 Street Right-of-Way**

- A. Street right-of-way must be at least forth (40) feet for a “private street.”
- B. Street right-of-way must be at least forty (40) feet for a “public street” in accordance with NC DOT standards.

- C. The Planning Board may modify above right-of-way requirements as they deem necessary or justifiable.

### **3.2 Sidewalks**

Where required or used, sidewalks must conform to Montgomery County standards.

### **3.3 Curb and Gutter**

Where required or used for public streets, curbs and gutters must conform to NC DOT standards.

### **3.4 Street Type**

- A. Where a “public street” is used, it must be constructed in accordance with NC DOT standards.
- B. Where a “private street” is used, it must be constructed in accordance with NC DOT standards with regard to pavement and stone thickness. Private streets must be identified on any record maps as “private street.”
- C. The Planning Board may modify the above requirements as they deem necessary or justifiable.
- D. In Montgomery County, any street that is to be acceptable for public maintenance must be built in accordance with the standards of the State of North Carolina.
- E. All other provisions of the Montgomery County Subdivision Ordinance remain in effect.

## **Section 4. Limitations on Project Size**

Because of the special nature of these provisions, it is desirable to limit the size of the area proposed for innovative development. This will insure the appropriateness of the land use relationships with adjoining property while providing the needed flexibility that is essential to the success of these provisions.

In the event an owner of a large tract of land desires to have more than one innovative development proposal (project) within the perimeter boundary of the larger tract, each project must comply with this Ordinance.



The project are that may be considered under these provisions is listed below:

75 acre max.

No minimum

Development may be accomplished through a single application for the entire allowable acreage or through a series of smaller areas which together do not exceed the maximum size allowed.

#### Section 5. Minimum Open Space Requirements

In order to insure that each project constructed under this Ordinance provides for adequate open space, both common open spaces for the enjoyment of the residents as well as adequate private open space for each home will comply with the following minimum standards.

The minimum common open space to be provided for each project exclusive of street right-of-ways is to be ten percent (10%) of the gross site area.

Each lot must contain at a minimum fifty percent (50%) of open space exclusive of all roof areas. Decks, trellises and patios may occur within this area; however, nothing under this Ordinance is to modify the normal building standards required by the North Carolina State building code.

#### Section 6. Required Off-Street Parking

Each lot shall provide a minimum of two (2) off-street parking spaces. These may be covered or uncovered, stacked, or side by side.

#### Section 7. Homeowners' Association

Each project, prior to final approval, must submit a preliminary description of the organization of the Homeowners' Association as well as restrictive covenants which apply to the community. These shall address the maintenance and responsibility for both public and private open spaces as well as maintenance requirements for patio exterior walls.

#### Section 8. Cluster Developments in Watersheds

Clustering of development is allowed in all Watershed Areas (except WS-I) under the following conditions:

### **8.1 Minimum Lot Sizes and Numbers of Lots**

Minimum lot sizes are not applicable to single family cluster development projects except as described under the regulations for the applicable zoning district, as modified elsewhere in Article VIII. Cluster Developments, however, the total number of lots shall not exceed the number of lots which would be allowed for a single family detached development on the same site.

### **8.2 Built-Upon Areas**

Built-upon areas shall not exceed that allowed for the critical area or balance of the watershed, whichever applies. All built-upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.

### **8.3 Areas Other Than Built Upon Areas**

The remainder of the tract (not built-upon) shall remain in a vegetated or natural state. The title to the open space area shall be conveyed to any incorporated homeowners association for management, to a local government for preservation as a park or open space, or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

## **Section 9. Application**

In applying for approval of a cluster development concept, the applicant must include a letter to the Director of Planning with a statement of intent outlining: the purpose and objectives of the proposed development; the particular development standards that are being modified; the special design features or amenities that are being incorporated into the plan which make the proposed development significant and worthy of approval; and any other applicable information that the applicant may feel is appropriate. The applicant must submit a site development plan drawn to scale showing the information listed below:

- A. Proposed lot configuration(s).
- B. Proposed vehicular circulation system and off-street parking arrangements.
- C. Proposed pedestrian and/or open space system.
- D. Proposed screening, including fences, walls, or planting areas.
- E. Proposed treatment of any existing significant natural features.

The Board of County Commissioners, the Planning Board, or the Zoning Administrator may require additional information that may be necessary for an adequate review of the proposed development. This information may include individual dwelling unit concepts, intended use and design of the open space network, recreational amenities, and other similar information.

#### Section 10. Review and Approval

In evaluating an application for innovative developments, the Planning Board will consider whether the development plan meets the objective listed below:

- A. Accomplishes objectives as specified in the statement of intent.
- B. Exhibits special, atypical design features and thoughtful, imaginative use of the land.
- C. Provides for reasonable and appropriate land use relationships, both within the development itself and with surrounding areas adjacent to the development.
- D. Provides the community with a beneficial, alternative design concept which is potentially applicable in other community situations.

If the Planning Board disapproves an application for an innovative development, the grounds for the disapproval will be stated in the records of the Planning Board. Any appeal from the decision of the Planning Board may be taken to the Board of County Commissioners.